and was not in a safe condition to drive the motor-car.

Now with regard to the damages I found as a fact that the deceased was working as a clerk and during his free time and weekends he gave tuition to students. On the average I would say he earned about $350 p.m. At the time of his death he was 21 years old. If he works until the age of 55 he would have 34 years of working life. The loss of earning therefore at $350 p.m. with a 34 years purchase would be $66,055 on the annuity figure. I would round them up to $66,000.

For special damages, I would give $2,000 for the expenses for funeral, $400 for obtaining the Letters of Administration and $45 for obtaining other documents making a total of $2,445.

For the above reasons I would give judgment for the plaintiff accordingly with costs.

The defendant appealed from the above decision to the Supreme Court.

SUPREME COURT'

Ngan Siong Hing for the appellant.

David Tay for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court) : This appeal concerns a fatal accident claim by the dependants, that is, the parents of the deceased. At the death of the deceased, the father was about 58 years and the mother about 44 years of age.

The main issue before us is the question of quantum. In fact, most of the court's time was taken up by it. The learned Judge, in allowing 34 years' purchase, is, in our opinion, manifestly excessive. Also, he had not considered the vicissitude of life and the payment of a lump sum. On the facts and circumstances of this case we are of the view that 15 years' purchase would be a reasonable multiplier to adopt.

The ground relating to liability was entirely devoid of merits. The appellant did not produce any medical report to show that he was suffering from amnesia soon after the motor accident and he would be the most logical person to describe how it occurred. As the appellant failed to do so the learned Judge was perfectly justified to hold him solely to blame based on the police sketch plan.

We are prepared to accept the finding of the learned Judge that deceased was earning $350 per month. We noted that the learned Judge had not deducted a sum which deceased would have expended on himself. We consider a deduction of $90 per month a fair figure. That would leave a sum of $260 per month as multiplicant. Based on the annuity table, which, in practice, has been used by the courts in Malaysia, the amount to be awarded is $32,384.52. We would round this off to $32,500.

As regards the cross-appeal, we consider a sum of $4,000 for loss of expectation of life to be fair and reasonable. But, as this is a fatal accident claim by the dependants of the deceased this sum should be treated as having been merged in the amount awarded under the fatal accident claim.

For reasons given, we would allow the appeal with costs here only. We would also allow the cross-appeal with costs. Deposit to be refunded to the appellant.

Order accordingly.

Solicitors: *Abbas & Ngan; Gurdip & Co.*

KARPAL SINGH v. ATIP BIN ALI

[S.C. (Seah, Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) September 25, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 69 of 1986]

Practice and Procedure – Costs – Costs against advocate and solicitor personally – R.H.C. 1980, O.59 r.8.

Legal Profession – Advocate and solicitor – Professional conduct – Dereliction of duty – Personal liability to costs.

In this case the learned judge had struck out a civil suit against the appellant and another ([1987] 1 M.L.J. 82). The appellant applied for costs to be borne personally by counsel for the plaintiff. The learned judge declined to make the order. The appellant appealed.

Held: (1) an advocate and solicitor is an officer of the court and his professional conduct is always under the supervision and scrutiny of the court. It follows that when there is dereliction of duty on the part of an advocate and

solicitor in the conduct of his professional work the court may, in a proper case, order him to be personally liable for the costs of the proceedings after giving him an opportunity to defend himself;

(2) in this case, having come to a conclusion that the civil suit filed by the plaintiff was "conspicuously unmaintainable" and having rejected the explanation given by the advocate and solicitor for the plaintiff, the learned judge ought to have exercised his discretion and ordered that the costs of the proceedings be paid by the lawyer personally.

Cases referred to:

(1) *Myers* v. *Elman* [1940] A.C. 282.
(2) *Edwards* v. *Edwards* [1958] P. 235.
(3) *Mitra & Co.* v. *Thevar & Anor.* [1960] M.L.J. 79.

SUPREME COURT.

Karpal Singh, appellant, in person.

Karam Singh for the respondent.

Seah S.C.J. (delivering the Judgment of the Court) : The first thing to remember is that an advocate and solicitor is an officer of the court and that his professional conduct is always under the supervision and scrutiny of the court. It follows that when there is dereliction of duty on the part of an advocate and solicitor in the conduct of his professional work the court may, in a proper case, order him to be personally liable for the costs of the proceedings after giving him an opportunity to defend himself.

In the High Court below, after the learned judge had struck out the civil suit, Karpal Singh (2nd defendant), appearing in person applied for the costs of the action to be borne by Karam Singh, learned counsel for the plaintiff, personally. The learned judge declined to make such an order. On appeal, Karpal Singh argued that the learned judge had failed to exercise his discretion judicially. It was submitted that after finding the civil suit brought by the plaintiff to be "conspicuously unmaintainable" and in the absence of any explanation given by Karam Singh, the learned judge should have acceded to the application. We think the learned judge had misconstrued the principle laid down by the House of Lords in *Myers* v. *Elman*(1) explained by Sachs J. in *Edwards* v. *Edwards*(2) and followed by the then Court of Appeal in the case of *Mitra & Co.* v. *Thevar & Anor.*(3) In our opinion, having come to the conclusion that the civil suit filed by the plaintiff was "conspicuously unmaintainable" and having rejected the explanation given by Karam Singh, we think that this was a proper case where the learned judge ought to have exercised his discretion and ordered that the costs of the proceedings be paid by Karam Singh, the lawyer, personally. We therefore allow the appeal and amend the order of the learned judge by adding the words that "Karam Singh, do repay to the plaintiff, costs which the plaintiff has been ordered to pay to Karpal Singh, the 2nd defendant, under Order 59 rule 8(2) (b) of the Rules of the High Court, 1980." Costs of the appeal to the appellant to be paid by Karam Singh personally. Deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Karpal Singh & Co.; Karam Singh Veriah & Co.*

KRISHNAN v. PUBLIC PROSECUTOR

[S.C. (Wan Suleiman, Seah & Wan Hamzah S.C.JJ.) June 24 & October 3, 1986]

[Kuala Lumpur – Supreme Court Criminal Appeal No. 42 of 1984]

Criminal Law and Procedure – Charge of trafficking in dangerous drug – Second charge of cultivating cannabis plants – Application to have second charge stayed during trial – Wrongful admission of evidence relating to second charge – Statement of accused without caution being administered to him – Inadmissible evidence admitted in reliance on s. 27, Evidence Act – Conviction set aside – Evidence Act, 1950, ss. 27 & 167 – Criminal Procedure Code (F.M.S. Cap. 6), s. 113 – Dangerous Drugs Act, 1952, ss. 6B & 39B.

Evidence – Evidence wrongly admitted under s. 27, Evidence Act – Effect of wrongful admission – Evidence Act, 1950, ss. 27 & 167.

Criminal Justice – Evidence – Proof of guilt – Equal protection of law.

In this case the appellant had been charged on two charges, the first of trafficking in a dangerous drug, to wit cannabis, and the second of cultivating cannabis plants. After the evidence of the investigating officer was given in relation to both the charges, the learned Deputy Public Prosecutor applied to have the second charge stayed. The proceedings then continued on the first charge only in which the appellant was subsequently found guilty and convicted. The appellant appealed. On the appeal it was argued that the evidence of the cultivation of ganja was wrongly admitted in relation to the first charge. Such evidence was inadmissible, irrelevant and prejudicial and this occasioned a miscarriage of justice. It also appeared that the statement of the accused, not under caution was wrongly admitted in evidence and that the statement contained evidence which was not admissible under section 27 of the Evidence Act.